

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

NATIONAL SERVICE INDUSTRIES, INC.,)
F/D/B/A NORTH BROTHERS, INC.,)
)
Plaintiff,) Civil Action No.
) 3:09CV83HTW-LRA
)
v.)
)
JAY T. SEGARRA, M.D.)
RESPIRATORY TESTING SERVICES, INC.)
CHARLES E. FOSTER)
J. MICHAEL FITZGERALD, ESQ.)
CHRISTOPHER LINN TAYLOR)
JAMES W. BALLARD, M.D.)
PHILLIP H. LUCAS, M.D.)
JOHN DOE DEFENDANTS 1-20)
)
Defendants.)

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT BALLARD'S
MOTION TO STRIKE SUPPLEMENTARY RESPONSE**

Plaintiff, National Service Industries, Inc. f/d/b/a North Brothers, Inc. ("NSI"), through its counsel, Forman Perry Watkins Krutz & Tardy LLP, submits this Response in Opposition to Dr. James W. Ballard's Motion to Strike (Document 95) NSI's Supplementary Response in Opposition to Replies to Motions to Dismiss of Defendants Segarra, Fitzgerald, Ballard and Lucas, and to Dr. Ballard's Reply to Response to Rule 12(f) Motion, and states as follows:

As NSI stated in its Motion for Leave to File Supplementary Response (Document 93), NSI seeks to supplement its response in opposition to the motions to dismiss pursuant to Rule 12(b)(6), 12(b)(2) and 12 (b)(3), and to strike pursuant to Rule

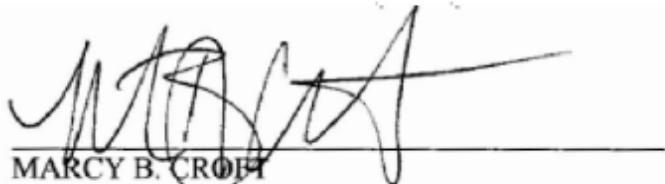
12(f), because Defendant Ballard submitted new exhibits to the Court in support of his motions to dismiss and strike, and all of the Defendants have made new arguments, including addressing for the first time in their replies or rebuttal in support of their Rule 12(b)(6) motions the Fifth Circuit's holdings in *Love v. National Medical Enterprises*, 230 F.3d 765 (5th Cir. 2000).

In addition, with respect to the number of pages of Memoranda of Law that NSI has filed in response to the pending Motions to Dismiss, as the Court is undoubtedly well aware, NSI filed a single Response, together with a single Memorandum of Law, in response to four Defendants' separate motions to dismiss pursuant to Rule 12(b)(6). Thus, the number of pages of NSI's Responses, including the Supplementary Response, and NSI's Memorandum should be acceptable.

Wherefore, NSI respectfully requests entry of an Order denying the Motion to Strike NSI's Supplementary Response.

Respectfully submitted this 16th day of September, 2009.

NATIONAL SERVICE INDUSTRIES, INC.
f/d/b/a NORTH BROTHERS, INC., PLAINTIFF



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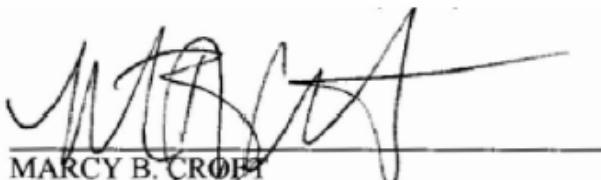
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CERTIFICATE OF SERVICE

I, the undersigned attorney, on behalf of the Plaintiff, NSI, do hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

THIS the 16th day of September, 2009.



MARCY B. CROFT